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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,222	02/25/2004	Anthony Walter Anson	78104068/N15321	3033

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Intellectual Property Department
DEWITT ROSS & STEVENS, S.C.
Firstar Financial Centre
8000 Excelsior Drive Suite 401
Madison, WI 53717-1914

EXAMINER

WOO, JULIAN W

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/786,222

Applicant(s)

ANSON, ANTHONY WALTER

Examiner

Julian W. Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 09/446833.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/25/04, 7/1/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 10, 13-17, 19-21, 24-26, 29-32, 34-36, 39-43, 45, 50, 51, 54, 57, and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Turk (5,554,180). Turk discloses, at least in the figures and in col. 2, line 14 to col. 3, line 13; a kit, expandable device (10), or method with the expandable device for supporting a bodily passage (a blood vessel) in an open state, where the kit, expandable device, or method (see col. 2, line 66 to col. 3, line 13) includes a device having one or more main channels (32) and subsidiary channels (30), where the channels are expandable from a collapsed state to an expanded state defining a framework (12) with a substantially tubular shape and an interior device passage; rigidifying material (an “absorbate” and/or an “absorbent”), and at least one inlet tube (40 and/or 44) extending from the expandable device; where at least some of the channels are joined by webs of flexible material (e.g., between cylinders 30), where the channels define ridges on the exterior of the framework when the channels are in the expanded state, where the interior device passage is coincident with a portion of the interior of the bodily passage when the channels are in the expanded state and collapsed when the channels are in the collapsed state, where the device is sheetlike with opposing sides (layers 18 and 20)

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when in its collapsed state, where the rigidifying material comprises at least two components (e.g., water and a copolymer of cellulose and starch, agar, polyamino acid, or gelatin; or oil and fat) and changes from a fluid state (watery or oily) to a more hardened, at least partially nonfluid state (semi-solid) after being combined (absorbate with absorbent), where the channels are radially expanded with inflexible outer diameters and are rigid along their lengths when in the expanded state, and where the method includes introducing a rigidifying material into the inlet tube and into the channels and removing the inlet tube (44) from the device.

3. Claims 1, 8, 13, 18, 24, 33, 34, 44-49, 52-56, and 58-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazim (5,330,528). Lazim discloses, at least in the figures in col. 4, lines 30-60 and col. 5, line 43 to col. 6, line 42; a kit, expandable device (e.g., B or B"), and a method with the expandable device for supporting a bodily passage (e.g., an aortic aneurysm) in an open state; where the kit, expandable device, or method includes a device (B) with one or more main channels (e.g., 16 or 62) and subsidiary channels (46), where the channels are expandable from a flexible, sheetlike, collapsed state to a rigid, expanded state defining a framework (B) with a substantially tubular shape, exterior ridges, and an interior device passage; a rigidifying material (e.g., CO₂) or fluid material introducable into the channels, and a removable inlet tube (70) extending from the device; where at least the subsidiary channels (46) have diameters less than the spacing (at webs 48) or distances between adjacent subsidiary channels, and where the method includes introducing a rigidifying material into the inlet

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tube and into the channels and removing at least a portion of the inlet tube from the device and the bodily passage.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 11, 12, 22, 23, 27, 28, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turk (5,554,180) in view of Pigott (5,156,620). Turk discloses the invention substantially as claimed, but does not disclose a rigidifying material comprising a component or material as claimed. Pigott teaches in col. 5, lines 2-7, a rigidifying material that is an acrylic, which is a pre-polymer or is a material from which cyanoacrylate or methacrylate derives. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Pigott, to apply a component or material as claimed, such as an acrylic, in the device of Turk. Such a

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material would not only be biocompatible, it would provide good strength and rigidity for the expandable device, so that the body can have long-term residence in the passage.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo
Primary Examiner

April 13, 2007